

Assembly Bill No. 2816

CHAPTER 833

An act to add Section 701.5 to the Penal Code, relating to minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1998. Filed
with Secretary of State September 25, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2816, Baugh. Minors: informants.

Existing law authorizes a finding of probable cause to make an arrest without a warrant or to grant an arrest warrant or a search warrant, based upon information provided by an informant under certain circumstances.

This bill would prohibit any peace officer or agent of a peace officer from using a person 12 years of age or younger as a minor informant, and from using a person under the age of 18 years as a minor informant, except as authorized pursuant to the Stop Tobacco Access to Kids Enforcement Act, unless the peace officer or agent of a peace officer has obtained an order from the court authorizing the minor's cooperation. The bill would require the court, prior to issuing such an order, and after specified conditions are satisfied, to make a finding that the agreement to act as a minor informant is voluntary and is being entered into knowingly and intelligently.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 701.5 is added to the Penal Code, to read:

701.5. (a) Notwithstanding subdivision (b), no peace officer or agent of a peace officer shall use a person who is 12 years of age or younger as a minor informant.

(b) No peace officer or agent of a peace officer shall use a person under the age of 18 years as a minor informant, except as authorized pursuant to the Stop Tobacco Access to Kids Enforcement Act (Division 8.5 (commencing with Section 22950) of the Business and Professions Code) for the purposes of that act, unless the peace officer or agent of a peace officer has obtained an order from the court authorizing the minor's cooperation.

(c) Prior to issuing any order pursuant to subdivision (b), the court shall find, after consideration of (1) the age and maturity of the minor, (2) the gravity of the minor's alleged offense, (3) the safety of the public, and (4) the interests of justice, that the agreement to

act as a minor informant is voluntary and is being entered into knowingly and intelligently.

(d) Prior to the court making the finding required in subdivision (c), all of the following conditions shall be satisfied:

(1) The court has found probable cause that the minor committed the alleged offense. The finding of probable cause shall only be for the purpose of issuing the order pursuant to subdivision (b), and shall not prejudice the minor in any future proceedings.

(2) The court has advised the minor of the mandatory minimum and maximum sentence for the alleged offense.

(3) The court has disclosed the benefit the minor may obtain by cooperating with the peace officer or agent of a peace officer.

(4) The minor's parent or guardian has consented to the agreement by the minor unless the parent or guardian is a suspect in the criminal investigation.

(e) For purposes of this section, "minor informant" means a minor who participates, on behalf of a law enforcement agency, in a prearranged transaction or series of prearranged transactions with direct face-to-face contact with any party, when the minor's participation in the transaction is for the purpose of obtaining or attempting to obtain evidence of illegal activity by a third party and where the minor is participating in the transaction for the purpose of reducing or dismissing a pending juvenile petition against the minor.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that minors are not placed in a position of danger of injury or death as a result of being used as an informant, it is necessary that this act take effect immediately.

